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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

**IN RE GOOGLE PLAY STORE
ANTITRUST LITIGATION**

THIS DOCUMENT RELATES TO:

States et al. v. Google LLC et al., Case No.
3:21-cv-05227-JD

Case No. 3:21-md-02981-JD

**DEFENDANTS' OPPOSITION TO THE
STATES' MOTION FOR APPROVAL OF
NOTICE OF PENDENCY AND
OPPORTUNITY TO OPT-OUT FOR
PARENS PATRIAE CLAIMS**

INTRODUCTION

Google objects to the Plaintiff States’ (“States”) proposed forms of the Summary Notice and Long-Form Notice for the States’ *parens patriae* claims (“Proposed Notice”) to the extent that they omit the fact that any recovery by the States may be reduced to pay attorneys’ fees to counsel for the States and potentially counsel for the consumer plaintiff class (“Consumer Class Counsel”) who do not represent consumers in the plaintiff States. The States should inform the consumers that they purport to represent that the States have agreed to let lawyers who do not represent those consumers apply for fees that will reduce the amount of money available to consumers. Google respectfully requests that the Court order a modification to the Proposed Notice to ensure that consumers are aware of these facts. Google does not take a position on the other issues raised in the States’ motion.

ARGUMENT

Google objects to the States’ Proposed Notice as it fails to sufficiently and adequately inform consumers that any recovery by the States could be reduced to pay attorneys’ fees not only for the States’ own counsel but also for Consumer Class Counsel who do not represent consumers in the plaintiff States.

The Proposed Notices do not say anything about the prospect that any recovery by the States on behalf of consumers could be reduced to pay attorneys fees or expenses of counsel. Courts regularly direct parties to include that information to assist consumers in making an informed decision when deciding whether to opt-out. *See Ayala v. Coach, Inc.*, 2016 U.S. Dist. LEXIS 144303, *8 (N.D. Cal. Oct. 17, 2016) (Donato, J.) (finding that notice was sufficient where it “fairly, plainly, accurately, and reasonably provide[d] class members” “appropriate information” about, *inter alia*, “the plaintiff’s and class counsel’s forthcoming applications for service payments, attorneys’ fees, and expenses[.]”); *Ruch v. AM Retail Grp., Inc.*, No. 14-CV-05352-MEJ, 2016 WL 1161453, at *5 (N.D. Cal. Mar. 24, 2016) (directing the parties to include certain information in the notice, including information on the calculation of attorneys’ fees); *Campbell v. Best Buy Stores, L.P.*, 2014 U.S. Dist. LEXIS 195093, *15 (C.D. Cal. Apr. 18, 2014)

(approving class notice stating that counsel “will be paid only if” plaintiffs win at trial or the parties settle, in which case the “fees will either be paid by” the defendant “or as a percentage of any monetary judgment in favor of” plaintiffs and that “[i]f there is no recovery, there will be no attorneys’ fees paid to the lawyers.”).¹

In fact, the notices cited by the States in their motion include this information. For example, the States cite *California v. eBay, Inc.* for the proposition that “federal courts in this District have adopted the procedures and standards used in class actions under Federal Rule of Civil Procedure 23” when determining whether “proposed *parens patriae* notices or settlements should be approved.” MDL Dkt. No. 546 (“Mot.”) at 4. In *eBay*, the court-approved notice includes a section titled “How will the lawyers be paid?” and informs consumers that the States’ “attorneys’ fees and costs” will be recovered from the money and benefits obtained in the case. See Declaration of Kuruvilla Olasa (“Olasa Decl.”) Ex. 1, ¶ 16, *California v. eBay, Inc.*, No. 5:12-cv-05874-EJD, Dkt. Nos. 55-6, 85 (N.D. Cal. Sep. 3, 2015); see also Olasa Decl., Ex. 2, *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827-SI, Dkt. Nos. 7158-2, 7697 (N.D. Cal. Apr. 3, 2013) (court approved notice explaining that attorneys fees (among other costs) will be deducted from funds being distributed to the class); Olasa Decl., Ex. 3, ¶ 18, *In re Macbook Keyboard Litig.*, No. 5:18-cv-02813-EJD, Dkt. Nos. 420-3, 426 (N.D. Cal. Dec. 2, 2022) (same); Olasa Decl., Ex. 4, ¶ 15, *In re Facebook Internet Tracking Litig.*, No. 5:12-md-02314-EJD, Dkt. Nos. 233-1, 241 (N.D. Cal. March 31, 2022) (same); Olasa Decl., Ex. 5, ¶ 11, *Cottle v. Plaid, Inc.*, No. 20-cv-3056-DMR, Dkt. Nos. 138-1, 153 (N.D. Cal. Nov. 19, 2021) (same); Olasa Decl., Ex. 6, ¶ 9, *Taylor v. Shutterfly, Inc.*, No. 5:18-cv-00266, Dkt. Nos. 101-1, 106 (N.D. Cal. Dec. 7, 2021); Olasa Decl., Ex. 7, ¶ 17, *Briseno v. ConAgra Foods, Inc.*, 11-cv-05379-CJC-AGR, Dkt. Nos. 652-1, 655 (C.D. Cal. Apr. 4, 2019) (same); Olasa Decl., Ex. 8, ¶ 16, *In Re USC Student*

¹ Indeed, the Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide published by the Federal Judicial Center cautions courts to consider whether “notices contain sufficient information for a class member to make an informed decision” and to “watch for the omission of information that the lawyers may wish to obscure (such as the fee request) but that affects class members nonetheless.” See Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide *available at* <https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf>.

1 *Health Center Litig.*, No. 2:18-cv-04258-SVW-GJS, Dkt. Nos. 139-2, 148 (C.D. Cal. June 12,
2 2019) (stating that attorneys fees will be separately paid by defendants and not deducted from any
3 funds obtained by the class).

4 Providing consumers with information about applications for attorneys' fees is
5 particularly appropriate here, where the States have an agreement with Consumer Class Counsel
6 regarding fee applications. In their Joint Prosecution Agreement ("JPA") with the consumer class
7 (MDL Dkt. No. 250-3), the States have agreed that Consumer Class Counsel may request fees to
8 be paid out of any recovery obtained for consumers even though the Class Counsel do not
9 represent consumers in those States. *See* JPA § IV (MDL Dkt. No. 250-3) (noting that under the
10 agreement "Class Counsel may make an application to the Court for an award of attorneys' fees
11 and reimbursement of litigation expenses from any recovery created by resolution of the Covered
12 Claims [the *parens patriae* claims brought by State Plaintiffs], whether by settlement, verdict or
13 judgment"). In other words, public officials who purport to represent consumers in their States
14 have agreed that lawyers who do not represent those consumers can apply for fees to be paid out
15 of a fund that would otherwise go to the consumers. The Proposed Notices should inform
16 consumers of that fact.

17 The States' motion argues that Google has not identified precedent for providing this
18 information in a *parens patriae* notice. That is because the States have not identified any
19 precedent for the JPA arrangement entitling Consumer Class Counsel to apply for fees out of
20 funds recovered for consumers who those lawyers do not represent.

21 CONCLUSION

22 The Proposed Notice for the States' *parens patriae* claims should be modified to include
23 information about attorneys fees, including that any recovery by the States may be reduced to pay
24 attorneys' fees to counsel for the States and potentially Consumer Class Counsel who do not
25 represent consumers in the plaintiff States.

1 Dated: August 10, 2023

2 Respectfully submitted,
3 By: /s/ Kuruvilla Olasa
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